

The BROWARD BARRISTER

JUNE, 1975

Volume 4

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Executive Offices, 733 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

THE FLORIDA BAR CONVENTION

JUNE 18-21, 1975

BOCA RATON HOTEL, BOCA RATON, FLORIDA

The meeting of Broward County Bar Association will not be held in June as the regular meeting date coincides with the date of The Florida Bar Convention, and you are urged to attend this convention.

One of the major programs for this convention will be the "high performance leadership course" offered by James W. Newman, a nationally recognized expert in the field of "healthy human behavior."

This specialized program, the first of its kind for any Florida Bar convention is offered to the lawyers of Florida without charge so that they can better understand their clients, law partners, associates and business associates with whom they come in contact daily. New ideas will be offered to you on how to analyze your work habits, improve your basic skills, become more communicative, and in four words, establish "personal and professional effectiveness."

This program will be presented Thursday Afternoon, June 19, and again on Friday morning, June 20.

Don't forget! . . . Bring your spouse!!!!

If you have not purchased tickets for the banquet on Saturday night you should do so immediately upon arrival at convention. Entertainment will be presented by Jimmy "J.J." Walker.

Please read your Florida Bar Journal for details.

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964-

BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

WEDNESDAY, JULY 2, 1975

5:00 p.m. Case Evaluation Committee and Trial Clinic. (Bring your cases and questions)

6:30 p.m. Cash Bar

7:00 p.m. Dinner — \$10.00

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**BROWARD COUNTY TRIAL LAWYERS
ASSOCIATION**

YOUNG LAWYERS SECTION

General Meeting—June 26, 1975

PLAYERS CLUB

1299 E. Oakland Park Boulevard
Oakland Park, Florida

12:00 Noon — Luncheon: \$3.75

Please contact Michael J. McNerney for reservations at: 2881 E. Oakland Park Boulevard, Fort Lauderdale, Florida 33306.
Telephone: 566-7511

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YOUNG LAWYERS ANNUAL SPRING PARTY

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5200 N. Ocean Boulevard
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June 13, 1975—7:00-11:30 P.M.

Free Party—including band and food
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OPERATION:

UPDATE/TRANSITION

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June 18, 1975—4:30 P.M.

Negligence actions, initial interview through trial

Speakers: John F. Spellacy, Esquire
Fort Lauderdale

Sheldon Schlesinger, Esquire
Hollywood

County Commission Room 250
Broward County Courthouse

Speakers' Outlines and Hand-Outs
\$1.00 printing donation requested

July 16, 1975—4:30 P.M.

Criminal law

Broward County Bar Association
733 N.E. Third Avenue
Fort Lauderdale, Florida 33304
764-8040

OFFICERS

George A. Patterson *President*
Ray Ferrero, Jr. *President-Elect*
Lawrence J. Meyer *Secretary*
Ronald P. Anselmo *Treasurer*
Norma Howard *Executive Secretary*

LEGAL SECRETARIES

The following officers were installed on May 21, 1975 for the Broward County Legal Secretaries Association:

President Dolores C. Ott
First Vice President Dorothy A. Lahan
Second Vice President Jean Harris
Recording Secretary Judy Bell
Corresponding Secretary Patricia Dolan
Treasurer Sharon Fornes
Governor and NALS Representative Val Lazzari

For membership information, call:—
Dorothy A. Lahan at 761-2438.

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SCHEDULE OF NON-COURTHOUSE HEARINGS—CIRCUIT COURT

Date	Pompano	Hollywood
July 1	Judge Richardson	Judge McCauley
July 8	Judge Warren	Judge Ferris
July 15	Judge Tedder	Judge LaMotte
July 22	Judge Johnson	Judge Franza
July 29	Judge Hare	Judge Booher
Aug. 5	Judge Minnet	Judge Seay
Aug. 12	Judge Nance	Judge Fischer
Aug. 19	Judge Richardson	Judge Seay
Aug. 26	Judge Gonzalez	Judge Farrington
Sept. 2	Judge Tedder	Judge Fischer
Sept. 9	Judge Hare	Judge Franza
Sept. 16	Judge Warren	Judge LaMotte
Sept. 23	Judge Johnson	Judge Booher
Sept. 30	Judge Minnet	Judge Ferris

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PRESIDENT'S MESSAGE

As our bar association begins another year, it is not difficult to realize that we will face numerous substantial challenges to our profession in the coming year. The abilities of all of us working together will be required in order that we successfully meet these challenges and turn them into areas of progress for us and our clients. Probably the most important area of present concern for us in Broward County is the potential problem of Court congestion which seems to be rapidly gaining on us, if it has not already arrived. In the past we have prided ourselves in the knowledge that in Broward County we could usually get to trial in a substantial case faster than some of us could get it prepared for trial. Now, however, with the continued growth of our country and the legislature's failure to meet the needs of the people by not allowing more judges, we are faced with a potential court crisis. Our judges are concerned and are attempting to find ways to alleviate the problem within their present resources. Undoubtedly, they will need the wholehearted assistance and cooperation of our bar. It may mean that our present practices and procedures which we all value and appreciate will change substantially or it may mean a period of trial and error in an effort to find a workable procedure until we get the needed additional judges appointed. Whatever the avenue taken, I encourage you the members of our bar, to give serious consideration to this problem and to fully cooperate as you have always done in the past so that practices and procedures may be developed to the end that we will be able to have the rights of our clients determined in the same prompt manner as we have been able to do in the past.

Consideration of court congestion must also involve the new creature now to be found within the jurisprudence of medical malpractice in Florida. It is called the medical liability mediation panel. The establishment and proper operation of the panel in Broward County will also require the closely coordinated effort of our Courts and the bar together with the Broward County Medical Association. A reading of the statute creating the panel, section 768.133 Florida Statutes, makes it clear however that the Circuit Court will bear the prime burden of the operation of this new panel, and it remains to be seen how much this new responsibility will add to already overcrowded conditions of the court dockets.

Many other problems confront us. We will discuss more of them in future columns. What can you do? You can stay involved in the activities of your bar association so that together we may move ahead to the betterment of our profession.

George A. Patterson
President

Future Plans For Bar Association Programs

Members of the Entertainment & House Committee have met to discuss programs for the coming year. It has been determined that general meetings will be held on the third Thursday of each month at 12 o'clock noon (with the exception of September).

Plans are being made for interesting and valuable programs. Some of the things in the planning stages are: the economic situation in Broward County;

new legislation; Supreme Court Justice; a newspaper editor's view of the Bar establishments; recent impact decisions; and consumer affairs.

A buffet luncheon is planned for the July meeting to determine if this would be of interest to the members of the Bar. The committee would welcome your suggestions and ideas for programs which would be of interest to all members of the Bar.

The purpose of these meetings to serve the members of the Bar with stimulating programs.

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If further information is needed, call
BCBA, 764-8040.

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Nova Law School Library

The Nova Law Library will be closed during the months of June, July and August. This time will be used to remove the Library from its present location to the second floor of the Parker Building where it will open next September.

The new facilities, available to the members of the Bar, will include seating for 318 patrons, a 60,000 volume collection and individual rooms for dictation, group discussion, typing, etc.

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SERVICE OF PROGRESS

As a result of a Questionnaire sent to members of Broward County Bar Association in February regarding service of process of the Sheriff's Department, a meeting was held in Judge John Ferris' Chambers on May 1, 1975 in regard to the service of both civil and criminal process of the circuit and county courts.

The consensus of opinion at the meeting was that the service of process of our courts by the Sheriff has improved considerably since the addition of 6 new process servers in the civil division of the Sheriff's office, and it was felt that there was no need at this time for any wholesale appointments of elisors to serve process, although it is understood

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that there will be some occasions where such appointment would be necessary because of unusual circumstances.

All present agreed that a close watch will be kept on the service of process, and any complaints will be reported directly to Sheriff Stack so that immediate action can be taken.

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Expenditures—Adoptions

In a communication of May 12, 1975, the Division of Family Services stated that in its opinion the report of expenditures, as called for by \$63,132, is required to be filed in all adoptions, including adoptions of children placed by licensed child placing agencies, since there are no exceptions specified in the section. This includes adopting placements made by the Children's Home Society and similar agency placements.

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New Officers and Executive Committee Elected

At the annual meeting of the Broward County Bar Association held on May 15, 1975, the following were elected:

President George Patterson

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Secretary Lawrence Meyer
Treasurer Ronald Anselmo

Executive Committee Members

Paul Anton, Drake Batchelder, W. Michael Brinkley, Russell E. Carlisle, Harry Carratt, J. Peter Friedrich, Henry J. Prominski, Maurice O. Rhinehardt, Barry Stone, A. J. Thomas, Jr., Angeline G. Weir.

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Board of Governor's Meeting, May 1975

On May 29, 1975, the Board of Governors conducted an important three-day meeting in which numerous important issues were debated at length. Primary among them was the recommendation of a special ad hoc committee concerning disciplinary procedures. The committee conducted hearings throughout the state and presented numerous recommended changes, including the waiver of confidentiality on a finding of probable cause by a grievance committee, except on those matters where a private reprimand was clearly indicated. In preparation for the meeting, I, personally, spoke to no one who favored this change, and

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Don Norman seemed to have the same experience. In addition, a great wave of letters in opposition were generated by a letter written by Board member, Russell Troutman, from Orlando. His letter was sent to virtually every member of the Florida Bar, and I would estimate that five hundred responses were received. One of the Board members found one letter in the stack that favored the change, but every letter that I saw opposed it in terms which varied from firm to apoplectic.

The argument in favor of the proposition was that it would go a long way toward restoring public confidence in lawyers. The argument against it was that it would have the contrary effect — that is, the effect of exposing to the public every charge except those clearly meriting a private reprimand. The effect would have been to publicize charges of serious misconduct, even though the evidence of those charges might be very flimsy. The proposed change was voted down, 18 to 9.

Some other proposed changes were made, including a move for full-time paid Bar counsel in every disciplinary case. The Board rejected that proposal in favor of volunteers. A proposal was made and passed that every three years the President of The Florida Bar appoint a commission with a majority of lawyers and with some lay members, to review lawyer disciplinary problems, and results — not specific disciplinary cases. The Board also rejected a proposal to transfer disciplinary procedures presently exercised by the Board to a separate body.

The Board did adopt a procedure that should help lighten the burden of grievance committees with cases that do not constitute grievances. The Board approved a measure which would provide that no grievance committee hearing would be conducted if staff counsel and the committee chairman agree that there is no probable cause on the evidence that would be presented to the committee. In other actions concerning disciplinary matters, the Board approved a motion to seek a rule change, giving a referee's findings the same presumption of correctness as a trial judge's findings; approved a motion seeking a rule change to require a Bar exam when a lawyer is suspended for incompetence, suspended for a year or more, or disbarred; and approved a motion which would impose sanctions on tardy referees and Bar counsel.

In a related matter, the ad hoc committee also recommended rules concerning trust accounting. Mr. Norman chaired another committee which had examined the problem of trust account-

ing and review, and his committee report was presented in conjunction with the report of the ad hoc committee chaired by Burton Young, of Miami. Hearing those two reports together, the Board approved the following propositions:

(1) To establish minimal trust accounting record procedures.

(2) To establish a procedure whereby a lawyer would file an annual certificate that those standards have been met in his trust accounting procedures.

(3) To authorize the President of The Florida Bar to order spot audits upon a showing of good cause, and

(4) To establish a rule that the return of a trust check by a Bank for insufficient funds would constitute good cause for an audit.

Deferred until the July meeting of the Board was the question about whether trust accounts should be placed in some type of interest-bearing account, with the requirement that the interest be paid to The Florida Bar to support the client security fund and grievance procedures. This method of trust deposit in interest-bearing accounts is followed in two Canadian Provinces, but I suggest to you that it is a matter meriting considerable review, and I would urge each of you who have feelings on this matter to communicate them to Don Norman and to Bill Leonard, well in advance of the July Board meeting.

The Board considered the situation which arises out of DR2-102(D) of the Code of Professional Responsibility. The interpretation of the rule, as it is now written, permits law firms established in other states to set up a Florida office with resident lawyers who are admitted in Florida. A Petition has been filed before the Supreme Court to change the rule, and the decision of the Board after debate was to continue with that petition, rejecting a motion to rescind the Board's prior decision to ask for the rule change.

The subject of contingent fees was presented to the Board, and, again this was a matter which had provoked considerable lawyer interest throughout the state. A committee chaired by Bill Wagner, of Tampa, made suggestions concerning a sliding scale of percentage fees in personal injury and death cases. The scale would provide for the following percentages:

(a) 45% of that portion of the gross recovery equal to or less than \$2,500.00.

(b) 40% of that portion of the gross recovery exceeding \$2,500.00 and equal to or less than \$10,000.00.

(c) 33½% of that portion of the gross recovery exceeding \$10,000.00 and equal to or less than \$100,000.00.

(d) 25% of that portion of the gross recovery exceeding \$100,000.00. The phrase "gross amount paid by the defendant or defendants" and the phrase "gross recovery" means all money damages recovered, including attorneys' fees, but excludes any amounts paid by the defendant or defendants as costs and expenses of the litigation.

The Committee report also provided for reduction of the fees in the event the defendant delivers to the plaintiff or his lawyer a binding, written admission of liability, and the reductions would be as follows:

(a) No greater than 50% of the amounts computed above if the admission of liability is delivered to the claimant before the claimant enters into the contract contemplated by this rule.

(b) The fee as computed above shall be no greater than 75% of the amount computed above if the admission of liability is delivered to the client or client's attorney prior to the filing of the first answer or other pleading responsive to the Complaint or hearing before the Court on any defensive motions whichever first occurs.

(c) The fee as computed above shall be no greater than 90% of the fee as computed above, if the admission of liability is delivered prior to the actual commencement of trial.

There are other details in the committee report, including the provision for a contract with different amounts provided that the lawyer entering into the contingent fee arrangement with different amounts should provide a copy to The Florida Bar immediately and secure the approval of the Court in which the claim is thereafter filed.

After presenting the committee's report, Mr. Wagner stated that he personally did not favor the committee's findings, and that while he preferred no regulation of contingent fees, he would favor this type of regulation rather than control by the legislature. This matter will be the subject of additional study and reporting. The Board will consider it again at its September meeting. If you have feelings about this matter which have not been communicated, then please communicate them to Don Norman or Bill Leonard, well in advance of the Board's September meeting.

The Board also directed the budget

committee to switch the budget year to correspond with the Bar's year (July 1 through June 30), If this change is approved by the Supreme Court, it will require an adjustment in the dues billing procedure. The adjustment can be accomplished only by having a bill for 18 months or by having a bill for 6 months, returning in either instance to a 12-month bill after the adjustment is made. The Board almost unanimously felt that members of the Bar would prefer a 6-month dues bite to one of 18 months. This change, if approved, will be somewhat cumbersome until it is worked out, but it will then make the budget a great deal more manageable and a great deal easier to understand.

A PERSONAL NOTE: As most of you know, I have been on the Board of Governors of The Florida Bar for six years. It has been a trying and rewarding experience. During that six-year period of time I have seen the business of the Bar grow by leaps and bounds, just as the membership of the Bar has grown. The Board meetings have been fun and they have been long and sometimes tedious, and they have required a great deal of preparation and correspondence.

I would like to take this opportunity to thank each of you for the support, encouragement and help that you have given me. I urge you to do the same for Don and Bill. At the annual meeting at the end of this month in Boca Raton, Bill will be sworn in as a member of the Board to replace me. I am sure that he will find his service on the Board to be a rewarding experience, as Don and I have.

Don and Bill will be calling on you for more help in the coming years, with grievance matters and other committee assignments required by the Bar's work. One thing that has impressed me during my service is the surprisingly high percentage of people willing to say yes when asked to do work for The Florida Bar. I hope that all of you will continue in that spirit.

John S. Neely, Jr.

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COURT DECISIONS

Henry J. Prominski

An interesting case came out of the Tennessee Supreme Court. *Wheeler vs. Glenn Falls Insurance Company*, 513 SW 2nd 179, held that Workman's Compensation benefits could be awarded as a result of alcoholism. The complaint alleged that a police officer, as a result of a fall, aggravated degenerative arthritis and that this occurred on

duty. Notwithstanding the fact that the policeman had been diagnosed as an alcoholic some four years before the fall, the evidence shows that because of the arthritis the policeman increased his drinking which hastened his death and therefore was grounds for awarding Workman's Compensation. Although alcoholism is substantiated as a disease, the court did not separate this as a distinct actionable claim under Workman's Compensation.

The courts of Florida are still preoccupied with the no-fault divorce action and the alimony to be awarded to the wife thereunder. The First District in *Brown vs. Brown* reversed the trial court of Escambia county stating that the award of six thousand dollars rehabilitative alimony was inadequate to compensate the wife for her contributions to the marriage, that this award was an abuse of discretion for twenty-one years of marriage where the husband's net worth was over two hundred thousand dollars. The wife was entitled to a greater share in the accumulated assets.

The court in a lengthy opinion negated the indications from the members of the Bench and the Bar that the no-fault divorce has virtually eliminated alimony. The court recited a long history of cases for awarding of alimony and support concluding in the ultimate question, "How shall the material wealth of a marriage which is being dissolved be divided when one partner, the wife, has contributed her time to the marital home and children of the parties while the husband has pursued the accumulation of material goods?" The court emphasized that the husband and wife are equal partners and that the wife should not be short-changed.

The decision was reversed and remanded for proceedings to come up with a more equitable allotment to the wife for her contributions to the home and marriage. There was a strong dissent by Justice Boyer who stated that the court should practice self-discipline and refrain from entering the legislative field, that the awarding of "equal partners" division of the marital assets should be based on facts. Where the case does not have evidence before it that the wife has foregone a professional career and accumulation of her own estates, where there is no evidence that she would have contributed to the joint net worth of the parties but for the fact that she was fully occupied taking care of the children and providing a home.

There is a vast difference between the physical act of bearing a child and the fact of being a "mother" as that term is generally eulogized and is used

in the traditional American concept. From the facts of the wife's capability to earn, it did not appear that the award was inadequate. Justice Boyer further concluded that this judgment was a substantial departure from the court's former holdings, and that he would affirm the awardance of six thousand dollars lump sum as not an abuse of discretion by the trial court.

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WELCOME, NEW MEMBERS

SALVATORE V. FIORE, a native of Philadelphia, Pa., received his undergraduate and law degrees from the University of Miami. He is associated with DiGiulian, Spellacy, Bernstein, Lyons & Sanders, Fort Lauderdale, Florida.

RICHARD A. GESCHEIDT, a native of Staten Island, N.Y., received his undergraduate degree from Hiram College and his law degree from New York University. He is associated with Carlisle & Tworoger, Fort Lauderdale, Florida.

THOMAS A. GRAHAM, III, a native of Ft. Benning, Ga., received his undergraduate and law degrees from the University of Florida. He is associated with Carey, Dwyer, Austin, Cole & Selwood, P.A., Fort Lauderdale, Florida.

JAMES JOSEPH HUGHES, a native of Baltimore, Md., received his undergraduate degree from the Florida State University and his law degree from the University of Florida. He is associated with Eddy & Spindler, P. A., Pompano Beach, Florida.

JACK E. LONDON, a native of Hartford, Conn., received his undergraduate degree from Emory University and his law degree from the University of Miami. He practices alone in Hollywood, Florida.

FRANCES F. MARCHETTI, a native of Chicago, Ill., received her law degree from Chicago Kent College of Law. She practices alone in Fort Lauderdale, Florida.

C. RANDAL MORCROFT, a native of Houston, Texas, received his undergraduate and law degrees from the University of Florida. He is a member of the firm of Hennekam, Morcroft & Scherer, Fort Lauderdale, Florida.

WILLIAM E. QUISENBERRY, JR., a native of Wilson, N.C., received his undergraduate and law degrees from Washington & Lee University. He is associated with DiGiulian, Spellacy, Bernstein, Lyons & Sanders, Fort Lauderdale, Florida.

(Continued from last month)

NEW TRAFFIC LAW HIGHLIGHTS

By William R. Hussey

The new traffic rules also make several noteworthy provisions regarding the handling of traffic infractions. They provide that those infractions which may be settled by posting bond or payment within 10 days of the statutory civil penalty may in the alternative, and at the option of the offender, be satisfied by attendance at an accepted traffic school if one is available in the county where the infraction occurred. The offender must appear at the violations bureau of the court having jurisdiction of the offense to make this election within 10 days of the issuance of the citation, and the election shall constitute waiver of a right to a hearing.

If the offender is not a resident of, or domiciled in, the county where the infraction is charged, he may file a written statement alleging facts which he feels justify filing an affidavit of defense. If the judge or hearing official agrees, he may allow the offender to file an affidavit of defense, (a form for which is printed in the rules), which may accepted as an appearance where a mandatory hearing is required to admit or deny commission of the infraction, or a denial where no mandatory hearing is required. The affidavit may be considered as evidence along with other evidence at the hearing.

Rule 6.460 in part provides that accident reports shall be admissible at hearings. It would appear that there may be some conflict between this provision and FS 316.066 (4).

Deferred payment of penalties is allowed on motion of the offender or the court, and provision is made for suspension of the offender's license if he fails to pay within any allowed extensions of time.

Motions for new hearing or in arrest of judgment, or both, may be made within four days, or such greater time as the official may allow, not to exceed 10 days, after the official's decision on the infraction. An admission or determination that a person has committed a traffic infraction shall constitute a conviction for purposes of Chapter 322, Florida Statutes (Drivers' Licenses).

All failures to appear when required or to pay any penalty imposed or complete any driver school course assigned result in license suspension. However, the rules contain the mechanics for relief from this suspension upon the subsequent appearance or compliance by the offender.

There are numerous other provisions of this new law and the rules that go with it. These have been merely highlights which have hopefully given you an overview of it. For details, consult Chapter 74-377 of the 1974 session laws, and Florida Supreme Court Transition Rule 20, filed December 9, 1974, which appears at 306 So. 2d 489, published February 27, 1975.

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Golf and Tennis Tournament

The wind blew, the rain came and the annual golf and tennis games were cancelled. The dinner party was held as planned with 135 persons attending.

It was decided at this meeting to reschedule the golf and tennis for the fall, late September or early October. Refund checks will be mailed to registrants for these events. However, it is hoped that you will register for the fall event as soon as you receive the information giving a definite date.

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LAWYER PLACEMENT COMMITTEE

A committee to help in Lawyer Placement has been appointed to help in this service. Members of the committee are:

E. Hugh Chappell, Jr. **Chairman**

William Zlock *Reserv.* **Vice Chairman**

Thomas Leher **Raymond Posgay**

Steve Moody **William Quisenberry**

Plans are being formulated to make this program a workable service. The cooperation of the entire bar will be needed, and you are asked to send all inquiries to the bar association office. As soon as the plans are complete this information will be furnished to you.

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